

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.2008 of 2006

Date of decision : May 10, 2016.

Sandeep

.... Appellant

Vs.

Satbir and another

.... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present : Mr. Ravinder Malik, Advocate,
for the appellant.

None for respondent No.2.

AMOL RATTAN SINGH, J.

1. This is an appeal filed by the claimant before the learned Motor Accidents Claims Tribunal, Rohtak. The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.10,00,000/- on account of injuries and disablement to the claimant (present appellant).

As per the facts, taken from the Award of the Tribunal, on 21.10.2002 the appellant-claimant was travelling pillion on a scooter bearing registration No.HR-14-A/1466 at about 1:30 PM, from Jhajjar to Khudan. One Anil @ Kala was riding the scooter and the appellant-claimant was riding pillion behind him. When the scooter reached near a water-tank at village Silani, a four-wheeler bearing registration No.HR-45-4218 came from the opposite side, allegedly driven rashly and negligently and hit the scooter, which was stated to be at a moderate speed on the correct side of the road.

On account of the accident Anil @ Kala is stated to have died on the way to the PGIMS, Rohtak, whereas the present appellant-claimant, Sandeep, received grievous injuries including fractures in his right thigh, left leg and left hand.

The accident is stated to have been witnessed by one Umed Singh who was travelling in a jeep, who also brought the appellant and Anil first to the General Hospital, Jhajjar, from where they were referred to the PGIMS, Rohtak.

2. The appellant is stated to have remained admitted in hospital for 4 to 5 months and was operated upon many times, including treatment by one Dr. Mukesh Jain of Vardhman Hospital, Muzaffar Nagar (UP) and other hospitals.

Consequently, he incurred huge expenditure on treatment, transportation, medicines, special diet etc., as claimed.

It was further claimed in the petition that he still had to undergo two more operations.

His age, at the time of accident, was given to be 21 years and he stated that he was a fodder seller, earning Rs.5000/- per month. After the accident, it was stated that he had become disabled and had consequently become unable to work in his profession.

3. FIR No.474, dated 21.10.2002, is also stated to have been registered at P.S. Sadar, Jhajjar, for the commission of offences punishable under Sections 279/304-A IPC, against the driver and owner of the “offending vehicle”, presently respondent No.1.

This respondent was proceeded against *ex parte* by the Tribunal vide order dated 30.09.2003, but the respondent insurance company appeared

and filed its written statement, taking objections on various grounds, including jurisdiction, maintainability etc.

It was further contended that there was no proof of rash and negligent driving on the part of respondent No.1 and in any case, he did not have any valid and effective driving licence at the relevant time and had also not filed a copy of the insurance policy and consequently, it was not possible to admit or deny as to whether the “offending vehicle” was actually insured with respondent No.2.

4. Upon framing issues on the question of negligence, validity of driving licence, contravention of terms of the insurance policy and entitlement of compensation, the learned Tribunal heard oral evidence and upon appraising all evidence led, eventually came to the conclusion that respondent No.1 was guilty of negligence, leading to the accident, which resulted into injuries to the appellant-claimant.

No appeal against that finding, filed by the respondents, has been brought to the notice of this Court and consequently, the issue of adequacy or inadequacy of the compensation awarded by the Tribunal is being gone into straightway.

5. The appellant examined two doctors, one of whom, PW10, Dr.Ashish Devgan, proved the disability certificate to the effect that on account of the fracture of the right femur, the claimant had suffered permanent disability of 15%, as there was a shortening of the right lower limb. There was also stiffness in the right knee and scarring of the right thigh.

This witness deposed that he was one of the members of the board of doctors who had examined the claimant to ascertain his disability,

pursuant to orders of the Tribunal.

From a perusal of the follow-up and discharge cards, Exs.P1 and P2, the Tribunal found that the appellant remained admitted in the PGIMS, Rohtak, from 21.10.2002 to 14.01.2003, during which period he was operated upon for his fractures. He was readmitted within two days, i.e. on 16.01.2003 as he had suffered an infection of the femur and a 'C-Nail'. Consequently, he was re-operated upon and discharged on 14.02.2003.

Thereafter, the appellant remained admitted in Ganga Ram Hospital, Delhi, for about ten days and thereafter yet again had to get himself examined at Jaipur Golden Hospital, Delhi and Parmanand Hospital, Delhi, after which he was referred to Dr.Mukesh Jain of Muzaffar Nagar (UP).

Prescription slips-cum-O.P.D. Cards were placed on record in respect of these treatments, as per the Award of the Tribunal.

On the basis of these, the Tribunal found that the claimant again remained hospitalised from 11.09.2003 to 29.09.2003 at the Vardhman Trauma & Infertility Pvt. Ltd. Muzaffar Nagar (UP), where he was operated upon and a sum of Rs.65,000/- was charged from him. Again, he was admitted to the same hospital on 28.10.2003 and operated upon, after which he was discharged on 12.11.2003, with a sum of Rs.35,000/- charged from him. He was yet again admitted to the same hospital w.e.f. 24.11.2003, again operated upon and discharged on 06.12.2003. Again a sum of Rs.35,000/- was charged from him.

6. Based on the above and other evidence in the form of numerous cash memos, the Tribunal found that the appellant had spent a sum of Rs.1,94,987/- on his treatment, which was consequently awarded to him.

For the permanent disability of 15% on account of the

shortening of his leg, at a young age, a sum of Rs.30,000/- was awarded.

7. Though the appellant had claimed in his claim petition that he had an income of Rs.5000/- per month, in his oral evidence he stated that he earned Rs.10,000/- per month but there was no proof thereof, of either amount of income. Consequently, his actual income was taken to be that of an unskilled labourer @ Rs.2500/- per month.

Since the appellant remained under treatment for a period of 21 months, from 21.10.2002 to 22.07.2004, the sum of Rs.2500/- was multiplied with 21, thereby arriving at a loss of actual income, during treatment, to Rs.52,500/-.

8. Finally, the learned Tribunal awarded the following compensation to the appellant under various heads:-

“1.	On account of pain and sufferings	:	Rs.20,000/-
2.	On account of expenses of treatment	:	Rs.1,94,987/-
3.	On account of disability of permanent nature of the extent of 15%	:	Rs.30,000/-
4.	On account of loss of income during treatment	:	Rs.52,000/-
5.	On account of loss of amenities of life due to disability	:	Rs.20,000/-
6.	On account of expenses of transportation special diet and attendant	:	Rs.32,513/-
Total			Rs.3,50,000/-

On the aforesaid sum, interest @ 9% per annum was awarded, from the date of filing of the claim petition, till the realization of the amount.

9. As regards the liability, though respondent No.1 had not appeared before the Tribunal, the insurance company, i.e. respondent No.2, not having proved that the said respondent did not have a valid and effective

driving licence, or that there was any breach in the policy, the respondent insurance company was held liable to pay the amount of compensation.

As already noticed, no appeal by the respondents, against any of the findings of the Tribunal, has been filed, or at least brought to the notice of this Court.

10. A perusal of the order sheet in this appeal shows that respondent No.1 not having appeared, on a statement of learned counsel for the appellant, service of notice of the appeal on the said respondent, was ordered to be dispensed with, obviously for the reason that eventually it was the respondent insurance company which was to pay any enhancement of compensation, if awarded.

On the date of hearing of the appeal, nobody had appeared even for the insurance company, though earlier, counsel had been appearing.

11. Mr. Ravinder Malik, learned counsel for the appellant, submitted that actually the appellant had placed on record medical bills amounting to Rs.2,25,000/-, spent by him in various hospitals (the names of which have already been detailed hereinabove) but the Tribunal still awarded only Rs.1,94,987/- under the head of actual expenses.

He further submitted that the Tribunal also did not take into account the fact that the appellant had still to undergo two more operations and follow-up treatment.

Learned counsel next submitted that the assessment of income has also been erroneously kept down to Rs.2500/- without taking into account the fact that the appellant was actually a fodder seller, earning more than Rs.5000/- per month.

The amount of Rs.30,000/- for permanent disability and Rs.20,000/- for loss of amenities of life, was also submitted to be extremely low compensation.

Learned counsel further submitted that the suffering that the appellant went through, on account of repeated operations due to the infection suffered by him in his femur and on account of the C-Nail, has also not been adequately taken into consideration by the Tribunal. He, therefore, prayed that the compensation be suitably enhanced.

12. Having heard learned counsel, as regards the assessment of income and actual expenses incurred, though the possibility of higher sums having been spent by the appellant on his treatment, than Rs.1,95,000/-, on account of the fact that he underwent at least 5 operations in two different hospitals, i.e the PGIMS, Rohtak and Vardhman Trauma & Infertility Pvt. Ltd. Muzaffar Nagar (UP), and would obviously have spent money during his admission at Ganga Ram Hospital, Delhi also, other than on transportation from Rohtak to Delhi and for moving around to different hospitals within Delhi and thereafter to Muzaffar Nagar twice; however, in the absence of any firm proof by way of bills etc., it is not possible to grant a higher compensation under that head, then was awarded by the Tribunal.

Nor is it possible to assess a higher income than Rs.2500/- per month, as was assessed by the Tribunal, in the absence of any proof with regard thereto. As per the chart of minimum wages maintained by this Court, in the State of Haryana the minimum wage payable as on the date of the accident, i.e. 21.10.2002, was Rs.2140.09. Hence, the sum of Rs.2500 has been adequately assessed by the Tribunal, in the absence of any other evidence with regard thereto.

13. However, coming to the issue of pain and suffering, it is seen that the amount of Rs.20,000/- awarded is indeed extremely low, considering the fact that the appellant remained admitted in various hospitals for almost 2 years and under went at least five operations, with two more operations to be still possibly undergone at the time of hearing of the claim petition by the Tribunal, though no proof with regard thereto has been shown to this Court.

Even so, the mere factum of having suffered for almost two years, with at least five operations undergone, and the trauma of having to go to different hospitals in different cities because of the infection suffered after the first operation, in my opinion, the amount to be awarded for pain and suffering alone should be Rs.1,00,000/-.

Accordingly, the said amount is awarded, which is Rs.80,000/- more than the amount awarded by the Tribunal, under that head.

14. The amount awarded by the Tribunal, for disability, was Rs.30,000/-, with Rs.20,000/- awarded on account of loss of amenities of life, due to the disability.

Taking both these heads together, a further amount of Rs.50,000/- is awarded.

15. Consequently, a sum of Rs.1,30,000/- is awarded to the appellant, over and above amount of Rs.3,50,000/- awarded to him by the Tribunal. The said enhanced amount would carry interest @ 7.5% per annum, running from the date of filing of the claim petition, till the realization thereof.

The appeal is accordingly partly allowed to the above extent, with no order as to costs.

(AMOL RATTAN SINGH)
JUDGE

May 10, 2016